



DEPARTMENT OF THE NAVY

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20350-1000

CH-1 of 19 APR 1996

SECNAVINST 4900.36A

ASN(FM&C): FMO-111 (R)
23 July 1980

SECNAV INSTRUCTION 4900.36A

From: Secretary of the Navy

Subj: FOREIGN MILITARY SALES BETWEEN THE UNITED STATES AND THE
FEDERAL REPUBLIC OF GERMANY

Encl: (1) DOD Instruction 2110.32 of 25 March 1980

1. Purpose. To transmit enclosure (1) for implementation, compliance and information, as appropriate. This instruction transfers the responsibility for the preparation of the monthly DD Form 1344 to the Defense Finance and Accounting Service-Denver (R Center, Denver, Colorado.

2. Cancellation. SECNAVINST 4900.36 and Report Control Symbol DD-ISA (M) 476.

(D)

Deborah P. Christie

DEBORAH P. CHRISTIE
Assistant Secretary of the Navy
(Financial Management and Comptroller)

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ASD(ISA)

Department of Defense Instruction

SUBJECT: Foreign Military Sales Between the United States and the Federal Republic of Germany

- References:**
- (a) DoD Instruction 2110.32, "Financial Procedures for Military Assistance Sales Under the Military Procurement Agreement between the United States and the Federal Republic of Germany," November 7, 1962 (hereby canceled).
 - (b) DoD Directive 5132.3, "Department of Defense Policy and Responsibilities Relating to Security Assistance," December 20, 1972
 - (c) Military Procurement Agreement between the United States and the Federal Republic of Germany, October 8, 1956 and amendments (enclosure (2))
 - (d) and (e), see enclosure 3

A. REISSUANCE AND PURPOSE

This Instruction reissues reference (a) and supplements references (b), (c), and DoD Instruction 2110.29 (reference (d)), and prescribes uniform procedures for accounting and preparing requests for monthly advances of funds for Foreign Military Sales (FMS) cases from the Federal Republic of Germany (FRG). Report Control Symbol DD-ISA(M)476 is hereby superseded and canceled.

B. APPLICABILITY AND SCOPE

1. The provisions of this Instruction apply to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, and the Defense Agencies (hereafter referred to as "DoD Components").
2. Its provisions encompass sales of defense articles and services to the FRG under the Military Procurement Agreement (MPA) (reference (c)).

C. RESPONSIBILITIES

The Heads of DoD Components, or designees, shall follow the financial and administration procedures as prescribed in this Instruction in implementing sales to the FRG.

D. PROCEDURES

In addition to the general requirements of section III, DoD Instruction 2110.29 (reference (d)), the following special funding and accounting procedures apply to FMS made to the FRG under the provisions of the MPA (reference (c)):

1. Funding

a. Under paragraphs 2 and 3 of the MPA (reference (c)), the FRG will deposit 15% of the value ordered or other initial deposit when required by specific project agreement upon acceptance of the Letter of Offer.

(1) When such Letter of Offer or other communication is accepted by the FRG it will constitute a firm order on their part and will authorize the release of DD Form 2060, "FMS Obligational Authority," by the Air Force Accounting and Finance Center and the Security Assistance Accounting Center (AFAFC/SAAC) to the DoD Component concerned.

(2) Expenditure authority shall be issued by the AFAFC and SAAC when money is transferred from the FRG Treasury Deposit Account into the Trust Fund Receipt Account (978242).

b. DoD Components will not stipulate initial deposit requirements in the Letter of Offer; however, the DoD Components will develop financial annexes to the Letter of Offer which contain a payment schedule identifying funding requirements on a quarterly basis.

(1) The AFAFC and SAAC will use the payment schedule and delivery or progress payments data to establish monthly transfer requirements from the FRG U.S. Treasury Deposit Account to the Trust Fund Receipt Account (978242).

(2) The first payment identified in the payment schedule will include amounts required to cover the period between the Letter of Acceptance (LOA) expiration date and the first quarterly payment date.

(3) The first quarterly payment due date will be the 15th day of March, June, September, and December following the LOA expiration date.

c. Special funding procedures, provided for in DoD Instruction 2110.29 (reference (d)), and instructions for preparing the monthly DD Form 1344, "Statement of Fund Requirements for Firm Orders Received from the Federal Republic of Germany," are contained in enclosure 1.

d. Funds received from the FRG and transferred from the U.S. Treasury Account to the trust fund account will apply to the aggregate of all firm orders received from the FRG, and may be used to reimburse DoD Component appropriations regardless of whether sufficient funds have been received for the particular case. However, the accounting for the funds and the reporting to the FRG shall be made by individual case.

2. Reporting. In addition to the requirement of DoD Instruction 2110.29 (reference (d)), apply the following reporting procedures to FMS for the FRG.

a. The SAAC will submit DD Form 645, "Foreign Military Sales Transactions," on a quarterly basis to the FRG for all cases. The quarterly billing statement will identify cumulative deliveries and collections, plus current information pertaining to current quarter deliveries, services, progress payments, and financial forecasts. The quarterly billing statement will, to the extent practical, agree with values cited on DD Form 1344 prepared for the last month of each quarter; that is, September 30, December 31, March 31, and June 30.

b. The DoD Components concerned shall (1) prepare case closure certifications promptly when deliveries or services have been completed; (2) forward closure certifications to the SAAC for financial reconciliation and issuance of a final DD Form 645 case closure statement; and (3) render billings without awaiting subsequent notices of overages or shortages.

c. On account of the special funding procedures provided for in the MPA (reference (c)) and this Instruction, DD Form 1344 prepared monthly by the AFAFC and the SAAC will be the sole basis for billing the FRG and for transfers from the U.S. Treasury Account to the Trust Fund Receipt Account (978242), accounted for by the AFAFC and SAAC in accordance with DoD Instruction 2140.3 (reference (e)). The AFAFC and SAAC will not solicit payments from the FRG based on the quarterly billing statement.

d. When the presentation of the billings appears to be lagging significantly, the SAAC, upon notification from the FRG, will coordinate with the DoD Component concerned to determine the current status of billings and causes for delays in the submission of bills.

E. INFORMATION REQUIREMENTS

The reporting requirements of this Instruction have been assigned Report Control Symbol DD-DSAA(M)1101.

F. EFFECTIVE DATE AND IMPLEMENTATION

This Instruction is effective immediately. Forward two copies of implementing instructions to the Assistant Secretary of Defense (International Security Affairs) within 120 days.



Franklin D. Kramer
Acting Assistant Secretary of Defense
International Security Affairs

Enclosures - 3

1. Instructions for Preparing
DD Form 1344
2. Military Procurement Agreement
Between the United States and the
Federal Republic of Germany
3. References, con.

Instructions for Preparing DD Form 1344, "Statement of Fund
Requirements for Firm Orders Received from the Federal Republic
of Germany"

A. GENERAL REPORTING INSTRUCTIONS

1. The AFAFC and SAAC shall prepare DD Form 1344 (attachment 2) in submitting monthly fund requirements for firm orders received from the FRG under the amended Military Procurement Agreement between the United States and the Federal Republic of Germany (reference (c)) (hereafter referred to as the "Agreement").

2. The reports will be assembled into complete sets according to the implementing DoD Component, such as, Army, Navy, Air Force, and Defense Logistics Agency. Each set shall consist of:

a. A consolidated report of the total of all orders received under the Agreement.

b. A listing (Format A, attachment 1), by case sequence of all open (incomplete) cases for each implementing DoD Component with the dollar value of each case and a one-line entry for the total of all closed cases.

c. A justification statement for:

(1) Each new order received during the month.

(2) Each order (case) where there has been an increase or a decrease in the amount of the order since submission of the previous report.

(3) Each order (case) where funds are required for the period.

(4) Each completed case, marked "Final," when the final DD Form 645 has been submitted after the submission of the prior monthly report.

3. The SAAC shall prepare a consolidated DoD report and make the following distribution:

a. Four complete statements, five copies of the consolidated statement, and one extra listing of the open cases (Format A) to the Chief, German Military Representatives U.S.A. and Canada, 4000 Brandywine Street N.W., Washington, D.C. 20305.

b. One complete report, two DoD summaries, and one extra listing of open cases to the Office of Defense Cooperation, Federal Republic of Germany, Box 340, APO New York, N.Y. 09080.

c. Two copies of the DoD and DoD Component summaries to the U.S. Treasury Department, Main Treasury Building, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20305.

d. Two copies of the Defense Consolidated Report to the U.S. Department of Commerce, Bureau of Economic Analysis, 1403 K Street N.W., Washington, D.C. 20230.

B. SPECIFIC REPORTING INSTRUCTIONS

1. The following apply to the completion of the Head Items of each statement (DD Form 1344).

a. For the Month of: Enter the month and year for which the funds are requested.

b. As At: Enter the "As At" date the report is prepared. The cutoff date for preparing the reports will be at the end of the month immediately preceding the month the report results are to be submitted to the various report recipients. For example, the reports that are to be submitted identifying fund requirements for December will be "As At" October 31.

c. "Consolidated" or "Case Identity": Type "Consolidated" on the statement covering the total requirements for each DoD implementing agency and total statement for implementing agencies. On each justification statement, type the Case Identity.

2. Include in the consolidated statement information covering the total amount of all orders received pursuant to the amended Agreement (reference (c)), whether unfunded, completely funded, partially funded, or delivered.

3. List open (incomplete) cases on Format A in numerical or alphabetical case sequence, by case number or alphabet, dollar amount, and by page number when a statement is submitted.

a. Include all cases which have not been finalized and for which no DD Form 645 has been submitted and for those cases which are reported as final in the current monthly report. Show the page number to the right of the case identity when a justification statement is included in the monthly statement for a particular case.

b. Include justification statements as required in A.2.c of this enclosure. When the final DD Form 645 has been submitted on a case, a statement on that case will be required.

4. Submit a consolidated statement, DD Form 1344, and listing of open cases (Format A) each month even though no change to the amount of the orders or funds is requested for the month.

5. Prepare quarterly, individual DD Form 1344's on FMS cases valued at less than \$1 million unless it is determined that funds are required in interim months.

C. DETAILED REPORTING INSTRUCTIONS

1. Line A. Status of Orders, Deliveries, Progress Payments, and Services Performed

2. Line A.1. Firm Orders Received

3. Line A.1.a. From Prior Statement Submitted "As At"(Date)

a. Consolidated Statement. This amount is the same as reported at line A.1.c. of the report submitted for the prior month.

b. Justification Statements. Include in the justification statement for each order the total (net) amount of the order as reported on the statement previously submitted for that particular order.

4. Line A.1.b. Increases (+), Decreases (-)

a. Consolidated Statement. Include in the consolidated statement the net change, increase or decrease, from the total amount reported on the consolidated statement submitted for the previous month. The amount shown as increases or decreases will be the sum total as reported on the justification statements, by case, submitted for the period.

b. Justification Statements. Include a justification statement for each case when there has been an increase or decrease to the order since the time when the case was previously reported. Give a brief explanation of the reason for the increase or decrease in the value of the case shown on line A.1.a. in the space provided. The sum total of increases or decreases as shown on all justification statements will be equal to the amount shown at line A.1.b. on the consolidated statement and will control the cases to be reported on justification statements.

5. Line A.1.c. Revised "As At" Date of this Report

a. Consolidated Statement. The amount to be reported at line A.1.c will be the amount reported at line A.1.a., plus or minus the increases or decreases reported at line A.1.b.

b. Justification Statements. Report the same information as enumerated above, for each of the case reports included as justification statements for the month.

6. Line A.2. Less Balance of Undelivered and Incomplete Orders "As At" Date of this Report

a. Consolidated Statement. Include in the consolidated statement the total amount of all undelivered and incomplete balances of all orders (cases) "As At" date of the report. This data may be computed by subtracting the amount reported at line A.3. from the total reported at line A.1.c.

b. Justification Statements. Report the same information as enumerated above, for each of the case reports included as justification statements for the month.

7. Line A.3. Confirmed Deliveries Made and Services Performed "As At" Date of this Report. Report confirmed deliveries made, services performed, and progress payments as at the end of the month immediately preceding the month the report will be submitted.

a. Consolidated Statement. Report the total amount of all confirmed deliveries made, services performed, and progress payments for all cases--active and closed cases--"as at" the date of the report.

b. Justification Statements. Submit a separate statement for each case when deliveries have been made or services have been performed since the month the case was previously reported.

8. Line A.4. Estimated Deliveries, Progress Payments and Service Charges Through. Include in line 4 an estimate of deliveries, progress payments and service charges required for the 3 months subsequent to the "as at" date of report. For example, the report to be submitted August 1 will include an estimate of deliveries, progress payments and service charges for July, August, and September. The "as at" date of this report will be June 30.

a. Consolidated Statement. The amount reported on the consolidated statement will be the total of all amounts reported on the same line of all the justification statements.

b. Justification Statements. The total amount reported on all of the justification statements will be the amount to be reported on the consolidated statement.

9. Line A.5. Total. The amounts to be reported at line A.5. will be the total of lines A.3., plus A.4., and, on the consolidated statement, will represent the total funds required for the month of the reports and for each case reported on justification statements for the month covered by the report.

10. Line B. Status of Previous Month's Fund Requests

11. Line B.1. Funds Received "As At" Date of this Report

a. Consolidated Statement. Report funds received by the SAAC as of the "as at" date of the report, for all cases under the Agreement. For example the report to be submitted August 1 will show the total amount of funds received "as at" June 30.

b. Justification Statements. Report the same information enumerated above for each case being reported. The total of the amounts reported for each case may not agree with the amount reported on the consolidated statement because justification statements may not be included for all cases.

12. Line B.2. Fund Requests Submitted for

a. The Agreement (reference (c)), requires the Department of Defense to submit the Statement of Monthly Fund Requirements 30 days prior to the month the funds are to be advanced by the FRG.

b. Consequently, at the "as at" date the reports are prepared there will be two monthly requests which will not be funded. For example, when the report for the September fund requirements is prepared by the beginning of July, the July and August fund requirements will not have been advanced. In order to account for these pending requests, report the amounts requested for the 2 months at lines B.2.a. and B.2.b of both the consolidated and each of the justification statements included. The amounts reported at line B.2.a. and B.2.b. will be the same as reported for those months.

c. If the total of line B.1., plus B.2.a. and B.2.b. is greater than the amount reported at line A.5., disregard the difference since the adjustment will be taken into account at line C. as a credit (minus) amount.

13. Line B.2.a. (Insert Month Requested). Enter the second month immediately preceding the month entered at line C. For example, if the statements of fund requirements are for the month of September, enter July at line B.2.a. The amounts to be entered on both the consolidated and each justification statement must be the same as reported at line C. of the applicable monthly report; that is, in this example, the August statement.

14. Line B.2.b. (Insert Month Request). Enter the first month immediately preceding the month entered at line C. For the same example given above, August should be entered at line B.2.b. The amounts to be entered on both the consolidated and each justification statement must be the same as reported at line C. of the applicable monthly report; that is, in this example, the August statement submitted "as at" June 30.

15. Line B.3. Total Funds Received and/or Requested through Date of This Report. The amount to be reported at line B.3. will be the sum of lines B.1., 2.a., and 2.b.

16. Line C. Total Fund Requirements for Month of (Month). Enter the month covered by the statement. The amount reported at line C. will be the amount required or the refund to be effected for the month covered by the statement. The amount reported on the consolidated statement will be the sum of the net amounts reported at line C. on each of the justification statements.

17. Line D. Anticipated Fund Requirements for the Remaining Months of the Calendar Quarter for the Month Entered at Line C

a. The amended Agreement (reference (c)) requires that the Department of Defense submit estimates of monthly fund requirements for the remaining months of the same calendar quarter for the month entered at line C., and an estimate of the fund requirements for the following calendar quarter.

b. For example, for a report submitted on June 30 for the month of August, include fund requirements for August at line C. Include an estimate of fund requirements for September at line D.1.

c. For the report submitted on July 31 for the month of September do not include an amount at lines D.1. or D.2., but include an estimate of the next quarterly fund requirement only at line E.

18. Line E. Anticipated Fund Requirements for the Next Succeeding Calendar Quarter

a. In the example given above, the estimated fund requirements to be reported at line E. will be the total for October, November, and December. The amounts reported at lines D.1 and 2. and E. may be adjusted each month.

b. The amounts reported on the consolidated statement may not agree with the total of the amounts shown on the justification statements since the consolidated statement will include the anticipated amount for all open cases, whether or not reported on justification statements for the month.

Attachments - 2

1. Format A
2. DD Form 1344

Format A

List of Open (Incomplete) Cases
of Firm Orders Received
From the Federal Republic of Germany
(Under Reimbursable Aid Agreement, October 8, 1956)

For the Month of _____

As at _____ (Insert date of Preparation)

DoD Component _____

<u>Case Number</u>	<u>Value of Case</u>	<u>Statement Attached Page No.</u>
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**STATEMENT OF FUND REQUIREMENTS FOR FIRM ORDERS
RECEIVED FROM THE FEDERAL REPUBLIC OF GERMANY**
(Under October 8, 1956, Agreement, as Amended)

REPORT CONTROL SYMBOL DD-DSAA(M)1101	
CASE	DOD COMPONENT
FOR THE MONTH OF	AS AT (Date)

A. STATUS OF ORDERS, DELIVERIES, PROGRESS PAYMENTS AND SERVICES PERFORMED		
1. FIRM ORDERS RECEIVED:		
a. FROM PRIOR STATEMENT SUBMITTED AS AT _____	(Date)	\$
b. INCREASES (+), DECREASES (-)		\$
c. REVISED AS AT DATE OF THIS REPORT (A.1.a.+ or - A.1.b.)		\$
2. LESS BALANCE OF UNDELIVERED AND INCOMPLETE ORDERS AS AT DATE OF THIS REPORT		
3. CONFIRMED DELIVERIES MADE AND SERVICES PERFORMED AS AT DATE OF THIS REPORT		\$
4. ESTIMATED DELIVERIES, PROGRESS PAYMENTS AND SERVICE CHARGES THROUGH: _____		(Date)
5. TOTAL FUNDS REQUIRED (A.3+A.4)		\$
B. STATUS OF PREVIOUS MONTHS FUND REQUESTS		
1. FUNDS RECEIVED AS AT DATE OF THIS REPORT	\$	
2. FUND REQUESTS SUBMITTED FOR:		
a. MONTH OF _____		
b. MONTH OF _____		
3. TOTAL FUNDS RECEIVED AND/OR REQUESTED THROUGH DATE OF THIS REPORT		
C. TOTAL FUND REQUIREMENTS FOR MONTH OF (A.5. - B.3.) _____		\$
D. ANTICIPATED FUND REQUIREMENTS FOR REMAINING MONTHS OF THE SAME CALENDAR QUARTER IN WHICH THE MONTH ENTERED AT LINE C FALLS IN:		
1. FIRST _____		\$
2. SECOND _____		\$
E. ANTICIPATED FUND REQUIREMENTS FOR THE NEXT SUCCEEDING CALENDAR QUARTER		\$

• Explanation of Change

Mar 25, 80
2110.32 (Encl 2)

Military Procurement Agreement
between the United States
and the Federal Republic of Germany

Exchange of Notes signed at Washington
October 8, 1956

(English Text)

Mar 25, 80
2110.32 (Encl 2)

DEPARTMENT OF STATE

WASHINGTON

October 8, 1956

Excellency:

I have the honor to acknowledge the receipt of your note of October 8, 1956, the text of which in English is as follows:

"I have the honor to refer to the conversations between the representatives of our two Governments which took place in Washington from August 3 to August 16, 1956, concerning the sale by the United States of America to the Federal Republic of Germany of certain military equipment, materials, and services pursuant to the agreement between the two Governments of November 23, 1953, as modified by Article I, paragraph 4, of the Mutual Defense Assistance Agreement of June 30, 1955. As a result of these conversations the following arrangements have been formulated:

"1. On the basis of requests submitted by the Government of the Federal Republic for the purchase of such military equipment, materials and services, the Government of the United States will, in cases where such items and services can be made available for the purpose, so inform the Federal Republic through letters of offer or other appropriate communications. Such communications will indicate the price and time of delivery of such items or services, and other conditions.

"2. The Government of the Federal Republic will inform the Government of the United States in writing in the manner indicated in the letters of offer or other communications of the items or services which it wishes to purchase pursuant to such communications or agreed modifications of same. This will constitute a firm order on the part of the Government of the Federal Republic. In cases where no order is placed there will be no charge to the Government of the Federal Republic.

"3. The Government of the Federal Republic of Germany will pay in full to the Government of the United States the total price of the items and services ordered and any damages incident to cancellation of contracts in the following manner:

His Excellency
Heinz L. Krekeler,
Ambassador of the Federal Republic
of Germany.

"a) With a view to facilitating the execution of such orders and in order to provide a reasonable working fund (deposit), the Government of the Federal Republic will make payments in United States dollars into an account to be established with the Secretary of the Treasury, which account is to be maintained on the books of the United States Treasury and to be designated as "Secretary of the Treasury, Department of Defense, Military Purchases by Federal Republic of Germany". The Secretary of the Treasury of the United States will administer such account as a custodian and free of charge. A deposit will be made in this account, at the time of the placing by the Government of the Federal Republic of each firm order, in an amount not less than 15% of the total estimated price indicated in the letter or other communication of offer pursuant to which such order is placed. In order that the account may be maintained at all times at not less than 15% of the aggregate price of items and services firmly ordered and remaining undelivered, the Government of the Federal Republic will make subsequent deposits to this account, based upon notifications from the Department of Defense, in amounts required to cover the price of anticipated services and deliveries of equipment and materials, necessary advances and progress payments, as well as any damages and costs that may accrue from the cancellation of any contracts or rehabilitation work. Such notification will be made to the German Embassy in Washington at the beginning of each month and will specify the amount required to be deposited to cover such withdrawals for the next following month, which deposit shall be made within thirty days after receipt of each such notification. In order to assist the Government of the Federal Republic in anticipating future deposit requirements, the Department of Defense will also provide the German Embassy, one month before the beginning of each calendar quarter, a tentative estimate of the amounts which are expected to be requested under this procedure during the succeeding calendar quarter. Payments will be made out of this account by the Secretary of Treasury to the United States Department of Defense in such amounts as are certified to him by designated representatives of the Department of Defense to be payable to that Department under the terms of the present agreement. The amounts so payable to the United States Department of Defense during any calendar month shall be equal to the estimated deliveries, etc., contained in the monthly notification, given to the Federal Republic of Germany by the Department of Defense as set forth above, in connection with the deposit required to be made at the beginning of the same month. Any questions by the Federal Republic regarding deposits required under these estimates will be discussed by representatives of the two Governments and any necessary adjustments will be made in subsequent monthly deposits.

"It is understood that in lieu of cash deposits in United States dollars in the above described account, the Federal Republic may deliver

to the Secretary of the Treasury United States Treasury bills, or other marketable United States Government securities maturing within one year from the date of deposit, equivalent at face value to the amounts required to be deposited. The Secretary of the Treasury will, on the basis of instructions from the Government of the Federal Republic, invest or reinvest in United States Treasury bills, or in other marketable United States Government securities maturing within one year from date of purchase, any dollar funds in this account (including proceeds from redemption or sale of Treasury bills or other securities) which are not required for payments out of the account. The Secretary of the Treasury for the purpose of making payments out of this account, may use the proceeds of maturing Treasury bills or other securities and may, to the extent necessary, cause Treasury bills or other securities and may, to the extent necessary, cause Treasury bills or other securities to be sold at the market prior to maturity. The Secretary of the Treasury shall in such case have sole discretion in determining the particular bills or other securities to be sold. The proceeds of redemption of such bills or other securities at maturity or from sale of such securities prior to maturity shall be credited to the account. Any interest accruing from any of the above investments shall be credited to the account.

"After final settlement with the United States Department of Defense of amounts due as a result of all orders placed by the Government of the Federal Republic pursuant to the present arrangements, the Secretary of the Treasury will return to the Government of the Federal Republic any balances of cash or Treasury securities remaining in the working fund.

b) In addition to the working fund provided for above, the Government of the Federal Republic will provide to the Government of the United States a guarantee of the Bank deutscher Laender, in a form mutually agreeable to the two Governments, at the time of the placing of the first firm order, in an amount of not less than 25% of the established total price of the items and services ordered, as indicated in the letter or other communications of offer pursuant to which the order is placed. This guarantee will be increased at the time each additional firm order is placed in an amount representing 25% of the total estimated price indicated for such additional order. The guarantee will, however, be revised by mutual agreement from time to time in order to reflect the price of liquidated obligations against which it is not longer necessary to maintain the 25% security for which such guarantee is issued. The Government of the United States may have recourse to the banker's guarantee if the Federal Republic fails to make the deposits into the working account, in accordance with paragraph 3 (a) above, required to cover anticipated prices of services, deliveries of equipment and materials, necessary advance and progress payments, and costs and damages accruing from cancellation of any contracts or rehabilitation work.

"4. It is understood by the Government of the Federal Republic that for the time being quality control and inspection of equipment and materials covered by orders placed by the Federal Republic will be accomplished in accordance with the terms and conditions under which such equipment and materials are provided to the United States military services.

"5. In the discussions concerning the condition of equipment and materials, the German representatives noted with satisfaction that, pursuant to normal United States practice, alleged defects not attributable to circumstances arising after delivery to the agent of the Federal Republic would be examined by the MAAG, and, as mutually agreed, such defective equipment or materials would be repaired or replaced free of charge by the Government of the United States.

"6. The United States representatives indicated that under existing legislation the Federal Republic would enjoy the same exemptions from United States Federal taxation as the United States Government with respect to orders placed pursuant to these arrangements.

"7. The two Governments have agreed that the delivery of the equipment or materials to be furnished under this agreement shall be effected f.o.b. United States supply point, commercial or government, except for aircraft and except for high explosive ammunition, which would be delivered f.o.b. vessel at ammunition loading facilities under military control. The Government of the United States will facilitate the issuance of export licenses.

"8. Under these terms of sale the German Government would designate a shipping agent and/or freight forwarder to make all arrangements for shipment to Germany from the United States supply point, commercial or government. Title to the equipment or materials would pass to the German Government at the United States supply point at the time of acceptance by the commercial carrier or the freight forwarder. Loading of the equipment or materials on board the carrier's equipment would be accomplished by the United States Government. This service will be covered by accessorial charges (packing, crating and handling).

"9. Cancellation of contracts, failure to complete contracts, indemnification, or any other details involved in the implementation of these arrangements not specifically covered in this agreement are to be settled in due course through the MAAG, taking into account, where applicable, the provisions of the Offshore Procurement Agreement of April 4, 1955, with a view to developing solutions in the spirit of that agreement.

Mar 25, 80
2110.32 (Encl 2)

"10. The Government of the Federal Republic took notice that, except as may be otherwise agreed, the Military Assistance Advisory Group attached to the Embassy of the United States at Bonn will be available as a consulting and liaison body for questions arising from the implementation of this agreement or further arrangements.

"I have the honor to propose that this note, together with your reply confirming these arrangements, constitute an agreement between the Government of the United States and the Government of the Federal Republic of Germany, effective on the date of your note.

"Accept, Excellency, the renewed assurances of my highest consideration."

The Government of the United States of America confirms these arrangements and concurs with your proposal that your note of October 8, 1956, together with this note, constitutes an agreement between the Government of the United States of America and the Government of the Federal Republic of Germany, effective on the date of this note.

Accept, Excellency, the renewed assurances of my highest consideration.

/s/ Herbert Hoover, Jr.
Acting Secretary

DEPARTMENT OF STATE
Division of Language Services

(Translation)

LS No. 4714
/R-XVI
German

Embassy
of the Federal Republic of Germany
Washington, D.C.

October 24, 1960

Excellency:

I have the honor to acknowledge receipt of your note of June 15, 1960 the translated version of which was agreed upon as follows:

"I have the honor to refer to the note verbale of the Embassy of the Federal Republic of Germany of October 28, 1959 which was in reply to the note of the Department of State of December 23, 1958 concerning the agreement effected by an exchange of notes signed at Washington on October 8, 1956, which provides for sale of military equipment, material, and services by the Government of the United States of America to the Government of the Federal Republic of Germany. With reference to the foregoing exchanges, as well as the note verbale of the Embassy of the Federal Republic dated February 10, 1958 and earlier conversations between representatives of our two Governments concerning the cited agreement, and in order to establish more effective procedures with

His Excellency

Christian A. Herter,

Secretary of State of the

United States of America

respect to the purchases of Military equipment, materials and services by the Government of the Federal Republic, I have the honor to propose the following understandings:

1. In view of the desire of the Government of the Federal Republic to continue the current payment procedures which are outlined in paragraph 3a of the Agreement of October 8, 1956, the Government of the United States is prepared to continue these arrangements as they are presently operative.
2. The government of the United States has taken note of the statements of the Government of the Federal Republic that with respect to the guarantee provided for in paragraph 3b of the Agreement it has not been necessary to have recourse to this guarantee and that all payment obligations have been fulfilled promptly. Therefore the Government of the United States agrees that paragraph 3b be deleted and that accordingly paragraph 3a be redesignated as paragraph 3.
3. With respect to numbered paragraph 3 of the note["] verbale of the Embassy of the Federal Republic of Germany of October 28, 1959, concerning the provisions for the payment of services, it is noted that the new financial reporting procedures (reference I-6836/9, September 4, 1959) which were initiated by the Department of Defense and concurred in by the German Logistic Representative in the United States have put into effect the provisions for payment of services which have been considered desirable by the Government of the Federal Republic of Germany in this connection.

I have the honor to propose that, if the above understandings are acceptable to the Government of the Federal Republic of Germany, this note and your Excellency's note in reply concurring therein shall constitute an Agreement between our two Governments amending the Agreement of October 8, 1956, which shall enter into force on the date of your Excellency's note in reply."

I have the honor to inform you that the Government of the Federal Republic of Germany agrees to the proposals set forth in paragraph 1 to 3 of your note with the understanding that your note and this reply shall constitute an Agreement between our two Governments amending the Agreement of October 8, 1956, which shall enter into force on the date of this reply.

Accept, Excellency, the assurances of my highest consideration.

/s/ Wilhelm Grewe

CERTIFICATION OF TRANSLATION

I hereby certify that the above translation bearing LS No. 4714 was prepared by the Division of Language Services of the Department of State and that it is a correct translation to the best of my knowledge and belief.

/s/ Johnston V. McCall

Dated: Johnston V. McCall
Nov 2, 1960 Chief Translating Branch

Mar 25, 80
2110.32 (Encl 2)

DEPARTMENT OF STATE

WASHINGTON

October 10, 1956

Dear Mr. Ambassador:

In the agreement which has been worked out relating to the procurement of military equipment, materials and services on a reimbursable basis under Section 106(b) of the Mutual Security Act of 1954, as amended, special arrangements have been developed in order to simplify and expedite the delivery of military equipment and materials to the Federal Republic of Germany. Under those arrangements no distinction is drawn between orders placed for goods in stock and those which will require procurement or rehabilitation by the Defense Department.

With regard to an inquiry made by the German delegation during the course of the negotiation of the agreement referred to above, it is understood that these arrangements will not preclude the Federal Republic from raising at some later date, should it so desire, the question of the availability of credit terms as might be authorized under the provisions of Section 106, with reference to the purchase of military equipment and materials which are held in stock. If credit terms are proposed, the United States of course reserves the right, as in all other cases, to re-examine its pricing structure.

Sincerely yours,

For the Secretary of State

/s/ C. Burke Elbrick

C. Burke Elbrick
Acting Assistant Secretary
for European Affairs

His Excellency
Heinz L. Krekeler,
Ambassador of the Federal Republic
of Germany

Mar 25, 80
2110.32 (Encl 3)

REFERENCES, continued

- (d) DoD Instruction 2110.29, "Method of Financing, Funding, Accounting and Reporting for Foreign Military Sales to Friendly Foreign Government and International Organization," September 24, 1970
- (e) DoD Instruction 2140.3, "Foreign Military Sales Billing and Reimbursement Procedures," September 6, 1979